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Women and the Law: Title IX

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ror story from upstate New York, where prosecutorial discretion resulted in virtually no prosecutions for rape, with cases quietly nol prossed without the victim even being informed of the disposition. She was "kept after school" for encouragement and advice on strategy from Vicki Eslinger and Rhonda Copeland, attorneys from North Carolina and Brooklyn, New York, respectively. They were the final speakers on this content-packed panel, and shared practical experience and strategy in handling rape cases as friends of the victim, since they can have no official capacity (except in Ohio, which now permits — guarantees — counsel to the victim). They claim that in their jurisdictions if they merely move in and assert themselves as official "friend of the victim" that the prosecutors generally accept them as such and permit them to make inputs to his case. Since they have usually done their homework more thoroughly than the state's attorney has been able to, due to the caseload, they say that most are receptive and grateful for the help that is volunteered. In addition, all panel members agreed that a long-term benefit can be realized simply by seating a group of women in the courtroom as observers *at every rape trial*, formally identified to the court as "friends of the victim." This is said to have a remarkable tendency, over the long haul, to bring balance into these trials. The Bench in the particular court becomes aware that it is being observed by interested and legally knowledgeable women, and the effect seems to be similar to that pressure exerted on a teacher by having an "observer" in the classroom. It sounds like an inexpensive and certainly educational project for law students to undertake.



Chris Michael

Title IX

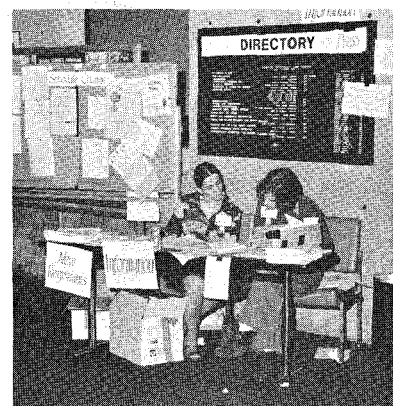
by Jana Guy

In keeping with its general purpose of analyzing the various means by which discrimination on the basis of sex can be alleviated, and remedied, the National Conference on Women and the Law devoted a special seminar to Title IX of the Education Amendments of 1972, codified at 20 U.S.C. SS 1681 *et seq.* (1974), which prohibits sex discrimination in federally-assisted education programs. A panel discussion focusing on the major problems involved in implementing the Title IX requirements was presented by three women who are currently involved in the implementation process: Ms. Colquitt Meacham, Branch Chief for Higher Education Office, General Counsel, Civil Rights Division of the United States Department of Health, Education and Welfare; Dr Joyce A. Clampitt, Director of Affirmative Action Programs for the North Carolina Community College System; and Ms. Jean King, an Ann Arbor, Mich., attorney involved in Title IX litigation.

Ms. Meacham began the discussion with an overview of the Title IX requirements and exceptions, emphasizing the HEW regulations for implementation which became effective on July 21, 1975.

Ms. Meacham pointed out that Title IX is the first, and to date, the only federal legislation dealing with student admissions and services. Title IX also covers employment, and to this extent, it overlaps with Title VII of the Civil Rights Act of 1964 and the Equal Pay Act. Men as well as women are covered by Title IX which provides in Section 1681 that "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under an education program or activity receiving Federal financial assistance."

There are certain exceptions to Title IX. With regard to admissions, Section 1681 applies only to "institutions of vocational education, professional education, and to public institutions of undergraduate higher education...." Thus,



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private undergraduate institutions and non-vocational elementary and secondary schools are exempt from coverage. Furthermore, public undergraduate institutions or high schools that have traditionally been one-sex institutions are omitted from the requirements regarding admissions. Once students of another sex are admitted to these traditionally one-sex institutions, however, Title IX requires that they be treated equally.

Military schools and schools controlled by religious organizations are exempt from all of Title IX's provisions. The HEW regulations require that a religious institution desiring exemption from Title IX must file a statement that the application of Title IX would not be consistent with the religious tenets of the institution. As Ms. Meacham noted, the religious institution exception may present a problem with constitutional ramifications.

The scope of Title IX is interpreted very broadly by the HEW implementation regulations, according to Ms. Meacham. Discrimination is prohibited in housing and facilities, courses and other educational activities, counseling, student financial aid, extracurricular activities, including student organizations and competitive athletics, benefits, rules and regulations, including rules of appearances, and research.

A special area of concern has been the area of athletics. Generally, the regulations provide that no person may be subjected to discrimination based on sex in any scholastic, intercollegiate, club or intramural athletics offered by a recipient of federal education aid. Separate teams for each sex are permissible, however, in contact sports and in teams that are selected on the basis of competitive skill. In noncontact sports, members of both sexes must be permitted to try out for teams when the school has had a team in that sport for one sex only and athletic opportunities for the other sex have been limited. Although separate athletic scholarships for each sex may be offered in connection with separate male/female teams, reasonable opportunities for scholarships must be provided for both sexes in proportion to the number of students of each sex participating in in-

terscholastic or intercollegiate athletics.

In connection with academic scholarships, the HEW regulations allow discrimination in student assistance for study abroad, so long as similar opportunities are made available for the other sex.

One of the most significant questions involved in Title IX implementation centers on the definition of an educational program. According to Ms. Meacham, the HEW position is that pervasive discrimination in any department of an educational institution that receives federal funds is covered by Title IX, even if the discriminating department is not specifically federally funded. For



Jane Swanson

example, pervasive discrimination in the admissions policies of an institution would be prohibited even if only the engineering department of the institution received federal funds. Similarly, pervasive discrimination in a non-federally funded athletics program is prohibited if any other department of the institution is the recipient of federal funds.

While only the recipient institution is subject to the requirements of Title IX, Ms. Meacham pointed out that the institution is required to insure that other groups who use its facilities or services, and with whom it has a significant nexus, are not discriminatory. Educational institutions have become very concerned

with the problem of defining the "nexus" required. For example, can the Jaycees, which has a discriminatory membership policy, be allowed to use the coliseum of a federally funded university for its national convention? Ms. Meacham explained that HEW is currently attempting to resolve this issue as situations arise. It should be noted in this connection that while social fraternities and sororities are excluded from Title IX coverage, professional groups are not. Thus the issue could also arise with respect to any professional fraternity, such as a legal fraternity, that has a discriminatory membership policy.

Another significant issue raised by the Title IX provisions is whether special consideration can be given to those who have been previously discriminated against; i.e., is reverse discrimination permissible? Under the HEW regulations, certain programs designed especially for the benefit of women, such as continuing education programs and women's centers, must be open to men. However the HEW has not arrived at a policy regarding remedial quotas designed to provide new opportunities for women, although Ms. Meacham indicated that in her opinion this type of program could be upheld.

The enforcement provisions of the HEW regulations require that between July 21, 1975 and July 21, 1976, any educational program that is subject to the Act must (1) disseminate information on Title IX; (2) designate a coordinator of the institution's efforts to meet the Title IX requirements and make his name known; (3) adopt and publish grievance procedures or extend existing procedures to apply to Title IX grievances; and (4) conduct an evaluation to identify areas of sex discrimination and modify its policies to eliminate sex discrimination and take steps to eliminate the effects of past discrimination. Records of modifications and remedial steps must be kept on file for three years.

The problems that educational institutions are facing in attempting to meet these enforcement requirements were discussed by Panelist Dr. Joyce A. Clampitt. Dr. Clampitt, relying on her experience as director of affirmative ac-

tion programs for the North Carolina Community College System, noted that the mechanics of meeting the Title IX requirements are presenting the most immediate problems to educational systems. The mechanics for conducting the self-evaluation process, for monitoring the system, for developing grievance procedures and for providing public notification are currently somewhat unclear, and according to Dr. Clampitt, many administrators, hoping to preserve their present procedures as much as possible, hesitate to make broad-based changes that they fear may not be absolutely required in the final analysis. Additionally, Dr. Clampitt pointed out that while administrators are quite willing to remedy the obvious elements of sex discrimination, they are less willing to even recognize the more subtle evidences of discrimination, such as an application form requiring one to designate whether one is a Ms., Mrs., Miss or Mr.

Ms. Jean King, an attorney with experience in sex discrimination litigation, concluded the program by discussing some approaches to Title IX litigation. Ms. King recommended that whenever possible, claims of sex discrimination and race discrimination should be joined to give the plaintiff two alternative routes to relief. She also advised the use of class actions to obtain relief for as many individuals as possible. Ms. King pointed out that she expected much of the initial Title IX litigation to be in the area of athletic programs, due to the fact that litigants might wish to take advantage of the publicity this controversial area of Title IX has attracted.

Family Abuse - Wife Beating

by Susan Schmoldt

Panelists: Jennifer Fleming, Coordinator and co-founder of

Women in Transition, Philadelphia, Pa.

Majorie Fields, Attorney-Brooklyn Legal Services. Experienced in wife beating cases. Brooklyn, N.Y.

Golden Johnson, Judge, Newark Municipal Court, Newark, New Jersey. Formerly Deputy Attorney General, State of New Jersey. On leave from Hoffman-LaRoache. ABA past president Women's Division. Youngest black woman judge in the country.

Wife beating persists despite the demise of the common law doctrine that women are the chattels of their husbands. It persists largely because of the attitudes toward wife beating and because of a lack of effective remedies and resources for coping with the problem.

Contrary to popular belief, wife beating is not primarily a low income phenomenon. It crosses socio-economic and racial lines. Police statistics reflect that it occurs most frequently among lower income people, but it is with lower income people that police have most contact. Also, where homes are larger and farther apart, domestic disturbances are less often heard and therefore less often reported. It is, however, among the lower income groups that there exist the least effective resources for dealing with wife beating.

When it occurs, wife beating almost always does not receive the immediate attention it requires. One reason for this is the attitudes of the beaten women themselves.

Many women have been trained to take a certain amount of abuse. In particular, it has been shown that among certain ethnic groups, "codes of wife beating" exist which define the scope of the beatings that a man may give, and a woman should tolerate. A woman who has been beaten and who tolerates it, is susceptible to a recognized psychological pattern. She begins to be stripped of her identity and self-image, and in this state, can accept the notion that "he beats you a little because he loves you."

If the beatings continue she may develop

the mentality of the terrorized wife in which she begins to feel powerless. She does not leave her husband because she simply feels she cannot leave. She will not flee to her family because she does not want to inflict her problems or her husband upon them. If she is poor, welfare agencies will often refuse to help unless she leaves her home, which without money or some means of support she cannot do.

Secondly, police are often unwilling to intervene in a wife beating incident which is not severe. Many actually believe that they cannot make an arrest for wife beating, or, they often feel she probably deserved it. Also, it has been said that intervention is hazardous and likely to lead to officer injury. (Police statistics show that a large percentage of officer injuries are incurred in intervening in domestic quarrels.) In jurisdictions in which civil remedies are available, police frequently advise the victim to go to the family or civil court and file a civil complaint.

Thirdly, the remedies for wife abuse are severely limited. In most areas the only remedy available is the filing of a criminal or civil complaint, and most jurisdictions provide for one or the other, not both. If the woman still cares for her husband and wishes to continue their relationship, she may wish to file a civil rather than criminal complaint. But most often she does not have that choice. Moreover, legal remedies alone cannot

